



*To enrich lives through effective and caring service*



March 5, 2013

The Honorable Board of Supervisors  
County of Los Angeles  
383 Kenneth Hahn Hall of Administration  
500 West Temple Street  
Los Angeles, California 90012

**ADOPTED**

BOARD OF SUPERVISORS  
COUNTY OF LOS ANGELES

27 March 5, 2013

*Sachi A. Hamai*  
SACHI A. HAMAI  
EXECUTIVE OFFICER

**Santos H. Kreimann**  
Director

**Kerry Silverstrom**  
Chief Deputy

**Gary Jones**  
Deputy Director

Dear Supervisors:

**CONSENT TO CHANGE OF OWNERSHIP OF LESSEE  
PARCEL 64T (BREAKWATER AT MARINA DEL REY FKA VILLA VENETIA)  
PARCEL 102S (ARCHSTONE MARINA DEL REY FKA KINGSWOOD  
VILLAGE APARTMENTS)  
MARINA DEL REY  
(4th DISTRICT)  
(4 VOTES)**

**SUBJECT**

Request consent to change of ownership with respect to the existing lessees for Parcel 64T and Parcel 102S, approve receipt of transfer fees, and approve escrow of funds to secure the lessees' payment of the total transfer fees determined to be payable under those leases.

**IT IS RECOMMENDED THAT YOUR BOARD:**

1. Consent to the change of ownership with respect to the existing lessee, Archstone Vista Del Rey LLC, for Parcel 64T, resulting from the sale of the beneficial ownership in lessee by Archstone Enterprise LP to Equity Residential, a Maryland real estate investment trust, and/or its affiliates.
2. Consent to the change of ownership with respect to the existing co-tenant lessees, Archstone Marina del Rey I LLC and Archstone Marina del Rey II LLC, for Parcel 102S, resulting from the sale of the beneficial ownership in lessees by Archstone Enterprise LP to Equity Residential, a Maryland real estate investment trust, and/or its affiliates.

3. Approve the receipt of transfer fees and escrow of funds by the Parcel 64T and Parcel 102S lessees to secure the lessees' payment of the total transfer fees determined to be payable under the leases.
4. Delegate authority to the Department of Beaches and Harbors to execute a ground lessor estoppel certificate with respect to each of Parcel 8T, Parcel 64T, Parcel 102S and Parcel 103T in form approved by outside counsel and County counsel.

### **PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION**

#### **Transfer of Beneficial Ownership in Archstone Leaseholds**

Your Board has previously consented to the assignment of three Marina del Rey leaseholds, Parcel 102S, Parcel 103T and Parcel 64 to lessees controlled by Archstone Enterprise LP, its predecessors in interest and/or affiliates (collectively, "Archstone"). Your Board has also previously consented to the assignment of the leasehold for Parcel 8T to a lessee in which Archstone holds a 28.57% beneficial ownership interest and the remaining beneficial ownership interest is held by other investors.

Archstone Enterprise LP, Lehman Brothers Holdings Inc., as owner of Archstone, Equity Residential (EQR), and AvalonBay Communities, Inc. (Avalon), among others, entered into an Asset Purchase Agreement dated November 26, 2012 for EQR and Avalon to collectively acquire all of the assets of Archstone for an aggregate purchase price of approximately \$16 billion (the "Archstone Sale Transaction"). The Archstone Sale Transaction provides for the transfer of Archstone's beneficial ownership interest in the Parcel 102S, Parcel 103T and Parcel 64T leaseholds to EQR as part of approximately \$9.6 billion in total assets to be acquired by EQR. The Archstone Sale Transaction also provides for the transfer of Archstone's beneficial ownership interest in the Parcel 8T leasehold to Avalon.

The transfer of Archstone's beneficial ownership interest in the Parcel 64T lessee requires (a) County's consent, (b) payment to County of a transfer fee equal to the greater of 2.5% of the gross transfer proceeds or 10% of the net transfer proceeds for such transfer, and (c) reimbursement to County of County's costs in connection with the transaction.

The transfer of Archstone's beneficial ownership interest in the Parcel 102S lessee might require (a) County's consent, (b) payment to County of a transfer fee equal to the greater of 5% of the gross transfer proceeds or 20% of the net

transfer proceeds for such transfer, and (c) reimbursement to County of County's costs in connection with the transaction. The determination as to whether the foregoing is required depends on the completion by County's economic consultant of the valuation allocation for the Parcel 102S leasehold, as further described below.

The transfer of Archstone's beneficial ownership interest in the Parcel 8T lessee does not trigger the requirement for County consent or the payment of any transfer fee or cost reimbursement. The transfer of Archstone's 28.57% beneficial ownership interest in the Parcel 8T lessee is exempt from the County consent requirement and transfer fee payment because the transfer pertains to a less than 50% minority interest.

The transfer of Archstone's beneficial ownership interest in the Parcel 103T lessee is exempt from the County consent requirement and transfer fee payment because the value of the beneficial ownership interest in the Parcel 103T lessee is less than 15% of the total value of the assets owned by the transferor. This particular exemption is present in the Parcel 103T and 102S leases that were executed in 2001 and 2005, respectively, but is not included in the more recent Parcel 64T lease that was executed in August 2011. County's economic consultant has reviewed the valuations pertaining to the Parcels 102S and 103T transfers. Those leasehold interests have been transferred at a level at which the total assets of the transferor were approximately \$1.625 billion. Thus, the threshold valuation for each leasehold to render the exemption inapplicable is approximately \$243,750,000 (as such amount may be subject to adjustment as a result of a determination of a higher value for Parcel 102S itself). County's economic consultant has concluded that the fair valuation of the Parcel 103T leasehold is less than the threshold amount. County's economic consultant has initially determined that the fair valuation of the Parcel 102S leasehold may exceed the threshold amount and thus trigger a County consent requirement and payment of a transfer fee.

Although the lessees of the exempt Parcel 8T and 103T transfers are not required to reimburse County for its costs incurred in connection with the exempt transfers, in order to expedite County's review and administration of the transaction, the lessees of all four leaseholds have agreed to reimburse County for those costs.

County Consent to Transfer -- Parcel 64T and Parcel 102S

The Archstone Sale Transaction involves the transfer by Archstone to EQR of 100% of the beneficial ownership interest in each of the Parcel 64T lessee and the Parcel 102S lessee. The Parcel 64T transfer constitutes a non-exempt change of ownership under the Parcel 64T lease and thus requires County consent. Depending upon the results of the valuation allocation for Parcel 102S, the Parcel 102S transfer may constitute a non-exempt change of ownership that requires County consent. Accordingly, this letter requests the Board's consideration of consent to the Parcel 102S transfer if and to the extent that it is hereafter determined that such consent is required.

County's consent may not be unreasonably withheld if the assignment standards set forth in the leases are satisfied. The assignment standards include, among other factors: (a) the financial condition of the assignee; (b) the assignee's experience in the construction, operation and management of similar residential projects; and (c) the reputation of the assignee.

EQR is a publicly-held real estate investment trust (REIT) that is in the S&P 500 and that has a market cap of approximately \$18.5 billion. EQR is experienced in the acquisition, development and management of high-quality apartment properties in top U.S. growth markets. It owns or has investments in more than 400 properties in 14 states and the District of Columbia, and is currently purchasing from Archstone approximately 75 operating properties, four properties under development and several land parcels to be held for future development. After the acquisition from Archstone it will have approximately 25,700 residential units under management in the region. The existing financing from JPMorgan Chase Bank, N.A. that was originated in 2011 in part to finance the renovation of the Parcel 64T leasehold will remain in place after the acquisition.

Parcel 64T Transfer Fee

The Parcel 64T transfer triggers the requirement that the lessee pay a transfer fee to County equal to the greater of 2.5% of gross transfer proceed or 10% of net transfer proceeds. EQR has designated the amount of the transfer fee as \$2,208,722.50 based on 2.5% of the allocated value of the Parcel 64T leasehold. After initial review of the Archstone Sale Transaction and lessee's submitted valuation, in the judgment of the County's economic consultant, the fair valuation of the Parcel 64T leasehold may exceed that submitted by the lessee by an amount that would trigger the payment of up to an additional \$692,000 in transfer

fee funds (for an aggregate transfer fee of up to \$2,900,722.50). Lessee has paid to County the undisputed \$2,208,722.50 amount of the transfer fee for Parcel 64T and has delivered into escrow funds in the amount of the entire potential additional amount of the transfer fee. The escrowed funds will serve as security for payment of the final amount of the transfer fee pending completion by the County's economic consultant of its review and analysis of the valuation data and methodology and resolution of any resulting negotiations with the lessee as to the correct valuation amount.

#### **Parcel 102S Transfer Fee**

If the 15% value allocation threshold is not satisfied, then there will be no transfer fee payable with respect to the Parcel 102S transfer. If the 15% value allocation threshold is met, then the Parcel 102S transfer will trigger the requirement that the lessee pay a transfer fee to County equal to the greater of 5% of gross transfer proceeds or 20% of net transfer proceeds. Lessee has delivered into escrow \$12,700,000 as security for payment of the final amount of any transfer fee payment that is determined to be owing, pending completion by the County's economic consultant of its review and analysis of the valuation data and methodology and resolution of any resulting negotiations with the lessee as to the correct valuation amount.

#### **Implementation of Strategic Plan Goals**

The recommended actions will permit County to administer the leases in a manner consistent with the terms and provisions of the leases and that will assist the County to achieve fiscal sustainability (Strategic Plan Goal No. 1, Strategy No.1).

#### **FISCAL IMPACT/FINANCING**

##### **County's Participation in Assignment of Lease**

In connection with the consummation of the Archstone sale transaction to EQR, the Department of Beaches and Harbors' operating budget will receive an initial payment of \$2,208,722.50 as the undisputed participation fee for the Parcel 64T transfer. The \$2,208,722.50 will be over-realized in the 2012-13 Final Adopted Budget. The Department may receive additional participation fee amounts of up to \$692,000 from the Parcel 64T transfer depending upon the final determination of the allocated leasehold value. As soon as any additional amount is determined, the additional amount will be included in the Adopted Budget for the

year in which the money is received.

There also may be a transfer fee of up to \$12,700,000 payable in connection with the Parcel 102S transfer, but whether a Parcel 102S transfer fee is payable, and the amount of the fee, remain to be determined. If any Parcel 102S transfer fee is payable the amount will be included in the Adopted Budget for the year in which the money is received.

Costs of the attorneys and consultants representing County in the administration of the Archstone sale transaction to EQR and Avalon, and the determination of any resulting transfer fees that may be payable, will be reimbursed by the lessees.

#### **ENVIRONMENTAL DOCUMENTATION**

The proposed County consents are not a project or projects pursuant to the California Environmental Quality Act (CEQA) because each consent is an activity that is excluded from the definition of a project by Section 15378(b) of the State CEQA Guidelines. The proposed consents are an administrative activity of government which will not result in direct or indirect physical changes to the environment.

In any event, on September 14, 2010, your Board considered and adopted a mitigated negative declaration for the underlying lease extension and renovation project for Parcel 64T, and concluded that said project, with the incorporation of the mitigation measures, will have no significant effect on the environment. The recommended consents to change of ownership do not raise any new or different environmental impacts.

#### **IMPACT ON CURRENT SERVICES (OR PROJECTS)**

There is no impact on other current services or projects.

#### **CONCLUSION**

Please authorize the Chairman of the Board of Supervisors to: a) instruct the Executive Officer of the Board to acknowledge the Chairman's signature on three copies of the Board Letter and return two executed copies thereof to the Department of Beaches and Harbors; b) delegate authority to the Director of Beaches and Harbors to execute a ground lessor estoppel certificate for each of Parcels 8T, 102S, 103T and 64T in form approved by outside counsel and

County Counsel; and c) instruct the Department of Beaches and Harbors to accept the \$2,208,722.50 as preliminary payment towards the County's transfer fee for Parcel 64T and the deposit by EQR of escrow funds in the aggregate amount of \$13,392,000 to secure the potential payment of any additional transfer amount determined to be owing for Parcel 64T and any transfer fee determined to be payable for Parcel 102S, pending completion by the County's economic consultant of the valuation allocation and the resolution of any resulting negotiations with the lessees as to the correct valuation amounts.

Respectfully submitted,

*Gary Jones*

for Santos H. Kreimann, Director

SHK:GJ:dlg

c: County Counsel